

Remarks

In response to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed 15 June 2006, the Applicant hereby resubmits the Amendment originally submitted on 27 March 2006 to incorporate the proper markings indicating the additions and deletions to amended Claim 48.

35 U.S.C. 103(a) Rejections of Claims 48, 49, 52, 53, 56, and 57. With respect to the Examiner's rejections of the referenced claims as being unpatentable over Gago (US 4,470,839), the Applicant reiterates the arguments made in Applicant's prior amendments and again refers the Examiner to the previously allowed claims 21-34 and 38.

The Examiner states in the Office Action dated 26 September 2005:

"Gago fails to teach a combination of sodium hexametaphosphate and sodium trimetaphosphate or the addition of another polyphosphate. However, no unobviousness is seen in this difference given that Gago teaches that the preferred phosphates are polyphosphates and metaphosphates, that the preferred alkali metal is sodium and that a mixture of the phosphates may be employed. Clearly, Gago suggests the claimed mixture of phosphates."

Both claim 21, as previously allowed by the Examiner, and claim 48, as previously rejected by the Examiner, claim a composition comprising calcium peroxide and/or magnesium peroxide, sodium hexametaphosphate and sodium trimetaphosphate. Both claims 21 and 48 contain the same amounts by weight of these components. The Applicant notes that the composition of claim 21, in addition to the claimed mixture of multiple complex phosphates, also contains a lubricant and a disintegrant in accordance with the "4 Series" composition described in the examples of the Applicant's original specification. Ostensibly the Examiner's allowance of claim 21 recognizes that the prior art fails to teach the composition of claim 21 that includes a disintegrant and a lubricant as additional components of the composition.

Based on the foregoing, the Applicant has amended claim 48 herein by including additional limitations so as to more closely reflect the "5 Series" composition described in the examples of the

Applicant's original specification. Specifically, the Applicant has included as component "e" of the amended composition of claim 48 a "disintegrant" which incorporates the scope and limitations of former claim 54 (which added an "organic disintegrant") and former claim 55 (which added an "inorganic disintegrant"). The 0.01% to 10% weight-percent range for the disintegrant component in revised claim 48 brackets the entire and overlapping weight percent ranges of former claims 54 and 55 and as found in the specification. This is reasonable as the use of any combination of the disclosed organic or inorganic disintegrants would fall within and not outside the total weight percentage range of 0.01% to 10% for which basis can be found in the specification (page 14, line 4 through line 27). Given the allowance of the composition of claim 21, it stands to reason that the composition of claim 48, as amended herein, should traverse the Examiner's prior grounds for rejection and hence be in condition for allowance.

Given that the rejected claims 49, 52, 53, 56, and 57 are dependent on claim 48, as the Applicant believes that claim 48 is in condition for allowance, the allowance of claim 48 should render moot the objections to these dependent claims.

35 U.S.C. 103(a) Rejections of Claims 50 and 51. With respect to the Examiner's rejections of the referenced claims as being unpatentable over Gago (US 4,470,839) as applied to claims above and further in view of Koenigsberg (US 5,264,018), the Examiner states the following:

"Gago has been discussed above. Gago fails to teach the addition of a nitrate. However, Koenigsberg teaches this difference in a bioremediation composition. See abstract; col. 12, lines 20-43. It would have been obvious to one of ordinary skill in the art to include a nitrate in the composition because Koenigsberg teaches that bioremediation compositions sometimes require additional nutrient supplementation such as 0-40% nitrates."

The Applicant respectfully disagrees. Applicant notes that Koenigsberg mentions the "0-40% nitrates" as an ingredient in a typical fertilizer composition. Typical fertilizer compositions also include other forms of nutrient nitrogen, such as ammonium and urea which are undesirable in the practice of the present invention, which is limited to the use of the specific nitrates listed in claims 50 and 51. Koenigsberg also notes that the addition of such a fertilizer form of nutrient nitrogen may

be unnecessary and that "the use of nitrates is disadvantageous because nitrate is a pollutant, and is not as efficient in delivering oxygen as the compounds disclosed herein" (See col. 2, lines 62-64; emphasis added). Koenigsberg makes no reference to the use of nitrates as an alternative anaerobic electron acceptor for microorganisms or as the sole form of nutrient nitrogen as does the Applicant in the present invention. Accordingly, Koenigsberg is not a clear or unambiguous reference which would make it obvious to include nitrates as per the present invention; in fact, Koenigsberg could be interpreted as teaching away from the use of nitrates as in the present invention.

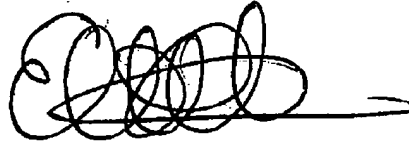
35 U.S.C. 103(a) Rejections of Claims 58 and 59. Claims 58 and 59 are canceled.

Objection to Claims 54 and 55. As the scope and limitations of claims 54 and 55 have been incorporated into claim 48 as amended herein, both claims 54 and 55 are canceled.

Conditional Request for Constructive Assistance

It is the Applicant's belief that this Amendment provides a complete response to the Examiner's Office Action mailed 26 September 2005 and the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed 15 June 2006. The Applicant also submits that the pending claims as set forth herein define the subject matter of the present invention in a manner that is proper, definite and distinguishable over the prior art. If, for any reason, this response is not deemed complete or this application is not believed to be in full condition for allowance, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to MPEP § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

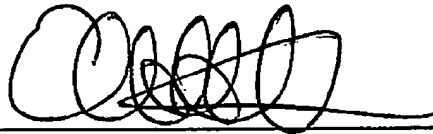


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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, have been faxed to (571) 273-8300, the fax number provided by the Examiner.



19 July 2006

Eric Christian Hince, Applicant